

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TAYJUAN TREVION-WAYNE FLETCHER

,

Plaintiff,

v.

SUZAN COLEMAN ,

Defendants.

Case No. 2:24-cv-00129-JCC-TLF

REPORT AND
RECOMMENDATION

NOTED FOR: OCTOBER 23 2024

This matter comes before the Court on defendants' motion to dismiss. Dkt. 20. Plaintiff did not file a response to the motion.

This matter has been referred to the undersigned Magistrate Judge. *Mathews, Sec'y of H.E.W. v. Weber*, 423 U.S. 261 (1976); 28 U.S.C. § 636(b)(1)(B); Local Rule MJR 4. For the reasons set forth below, the undersigned recommends that the Court grant the motion, with leave to amend.

BACKGROUND

Plaintiff, who is currently incarcerated at King County Jail, brings this lawsuit under 42 U.S.C. § 1983 alleging an Eighth Amendment violation. Dkt. 5. Plaintiff proceeds *pro se* and *in forma pauperis* in this matter. Plaintiff alleges that "due to lawsuit involving declines thru Columbia Legal Services I was not supposed to be housed in the whole/ special housing for a long time which as in a long time over 48 or 72 hours." *Id.* at 5. Despite this, plaintiff claims that he was housed there for two

1 months, during which time he experienced PTSD, ADHD, schizophrenia, and anxiety.
2 *Id.*

3 STANDARD OF REVIEW

4 Dismissal would be proper under Fed. R. Civ. P. 12(b)(6) if plaintiff's complaint,
5 with all factual allegations accepted as true, fails to "raise a right to relief above the
6 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007).

7 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
8 accepted as true, to "state a claim to relief that is plausible on its face." A claim
9 has facial plausibility when the plaintiff pleads factual content that allows the
10 court to draw the reasonable inference that the defendant is liable for the
misconduct alleged. The plausibility standard is not akin to a probability
requirement, but it asks for more than a sheer possibility that a defendant has
acted unlawfully.

11 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556, 570).

12 A complaint must contain a "short and plain statement of the claim showing that
13 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Specific facts are not
14 necessary; the statement need only give the defendant fair notice of what the . . . claim
15 is and the grounds upon which it rests." *Erickson v. Pardus, et al.*, 551 U.S. 89, 93
16 (2007) (internal citations omitted). However, the pleading must be more than an
17 "unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678.

18 While the Court must accept all the allegations contained in the Complaint as
19 true, the Court is not required to accept a "legal conclusion couched as a factual
20 allegation." *Id.* "Threadbare recitals of the elements of a cause of action, supported by
21 mere conclusory statements, do not suffice." *Id.*; *Jones v. Community Development*
22 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory allegations
23 unsupported by facts are not sufficient to state section 1983 claims); *Pena v. Gardner*,

1 976 F.2d 469, 471 (9th Cir. 1992). While the Court is to construe the complaint liberally,
2 such construction “may not supply essential elements of the claim that were not initially
3 pled.” *Id.*

4 DISCUSSION

5 A. Judicial Notice

6 Defendants have requested the court take judicial notice of court records from
7 *State of Washington v. Tayjuan Fletcher*, KCSC No. 20-1-02954-4 SEA. See Dkt. 21-1.

8 Pursuant to Federal Rule of Evidence 201, the Court may take judicial notice of
9 matters of public record if the facts are not subject to reasonable dispute. See *Lee v.*
10 *City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (internal quotation marks
11 omitted)). Court orders and filings are proper subjects of judicial notice. See, e.g.,
12 *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007) (noting that a court “may
13 take notice of proceedings in other courts, both within and without the federal judicial
14 system, if those proceedings have a direct relation to matters at issue”); *Reyn’s Pasta*
15 *Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice
16 of pleadings, memoranda, and other court filings).

17 Thus, the Court grants defendants’ request for judicial notice as to Dkt. 21-1, and
18 the Court will consider this document in deciding the pending motion.

19 B. Personal Participation

20 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show:
21 (1) he suffered a violation of rights protected by the Constitution or created by federal
22 statute, and (2) the violation was proximately caused by a person acting under color of
23 state law. See *Crompton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in
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1 a § 1983 claim is therefore to identify the specific constitutional right allegedly infringed.
2 *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

3 To satisfy the second prong, a plaintiff must allege facts showing how
4 individually-named defendants caused, or personally participated in causing, the harm
5 alleged in the complaint. See *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold*
6 *v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A person subjects another to a deprivation
7 of a constitutional right when committing an affirmative act, participating in another's
8 affirmative act, or omitting to perform an act which is legally required. *Johnson v. Duffy*,
9 588 F.2d 740, 743 (9th Cir. 1978). Sweeping conclusory allegations against an official
10 are insufficient to state a claim for relief. *Leer*, 844 F.2d at 633. Further, a § 1983 suit
11 cannot be based on vicarious liability alone; the complaint must allege the defendant's
12 own conduct violated the plaintiff's civil rights. *City of Canton v. Harris*, 489 U.S. 378,
13 385-90 (1989).

14 Defendants argue that plaintiff's complaint fails to allege particularized facts as to
15 provide notice for the legal basis of his claim and fails to establish personal participation
16 or a causal connection between defendants and a constitutional deprivation. Dkt. 20 at
17 7. Here plaintiff names Suzan Coleman, John Hurt, and Tee/Tina McCraw as
18 defendants, however, he does not allege any actions taken by any of these individuals
19 in the body of the complaint. See Dkt. 5 at 3-5. Indeed, the complaint does not allege
20 any actions taken by any individuals, but rather simply states that he was placed into
21 the maximum security special housing unit. *Id.* at 4.

1 If plaintiff wishes to pursue this § 1983 action, he must provide a short, plain
2 statement explaining exactly what each defendant did or failed to do and how the
3 actions violated plaintiff's constitutional rights and caused him harm.

4 C. Fourteenth Amendment

5 "Eighth Amendment protections apply only once a prisoner has been convicted of
6 a crime, while pretrial detainees are entitled to the potentially more expansive
7 protections of the Due Process Clause of the Fourteenth Amendment." *Mendiola-*
8 *Martinez v. Arpaio*, 836 F.3d 1239, 1246 n. 5 (9th Cir. 2016) (citing *Kingsley v.*
9 *Hendrickson*, 135 S. Ct. 2466 (2015)). Even though conditions of confinement claims
10 brought by pretrial detainees arise under the Due Process Clause, the guarantees of
11 the Eighth Amendment "provide a minimum standard of care for determining rights as a
12 pretrial detainee." *Gordon v. County of Orange*, 888 F.3d 1118, 1122 (9th Cir. 2018).

13 To state a Fourteenth Amendment claim relating to medical care of a pre-trial
14 detainee, a plaintiff must include factual allegations that a state actor acted, or failed to
15 act, in a manner that shows objective deliberate indifference to their serious medical
16 needs. *Gordon*, 888 F.3d at 1124-25.

17 The elements are: "(i) the defendant made an intentional decision with respect to
18 the conditions under which the plaintiff was confined; (ii) those conditions put the
19 plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not
20 take reasonable available measures to abate that risk, even though a reasonable
official in the circumstances would have appreciated the high degree of risk
involved – making the consequences of the defendant's conduct obvious; and
(iv) by not taking such measures, the defendant caused the plaintiff's injuries."

21 *Id.*, at 1125. The defendant's conduct must be objectively unreasonable; concerning
22 element (iii), plaintiff is required to show more than negligence, but less than subjective
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1 intent – “something akin to reckless disregard.” *Id.* (citations and internal quotations
2 omitted).

3 Plaintiff must show his medical condition is “objectively a serious one.” *Brock v.*
4 *Wright*, 315 F.3d 158, 162 (2nd Cir. 2003). Seriousness of the condition may be present
5 where there is:

6 ... The existence of an injury that a reasonable doctor or patient would find
7 important and worthy of comment or treatment; the presence of a medical
8 condition that significantly affects an individual’s daily activities; or the existence
9 of chronic and substantial pain...

10 *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992); *see also Brock*, 315 F.3d at
11 162.

12 Some Courts have found that holding inmates with serious mental illness in
13 prolonged isolated confinement may cause serious illness and needless suffering in
14 violation of the Eighth Amendment. *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1335 (D.
15 Ariz. 2014), *amended*, No. CV-77-00479-PHX-NVW, 2014 WL 6983316 (D. Ariz. Dec.
16 10, 2014), and *judgment terminated sub nom. Graves v. Penzone*, No. CV-77-00479-
17 PHX-NVW, 2019 WL 4535543 (D. Ariz. Sept. 19, 2019) (citing *Coleman v. Brown*, 938
18 F.Supp.2d 955, 979 (E.D. Cal. 2013) (mentally ill inmates in administrative segregation
19 faced substantial risk of serious harm, including exacerbation of mental illness and
20 potential increase in suicide risk)). “To determine whether segregated confinement
21 meets constitutional standards, courts must consider both the length of the segregated
22 confinement of inmates with serious mental illness and the specific conditions of the
23 confinement.” *Id.* (citing *Hutto v. Finney*, 437 U.S. 678, 686 (1978)).

24 Conditions that have been considered in making this determination include: “(1)
25 the length of time prisoners with mental illness spent in solitary confinement

1 (approximately 22 hours or more a day); (2) the extent to which solitary confinement
2 interfered with prisoners' ability to obtain adequate mental health treatment; (3) the
3 conditions accompanying the solitary confinement experienced by prisoners with
4 serious mental illness; and (4) the extent to which systemic deficiencies at the facility,
5 e.g., deficiencies in mental health programming, screening, and accountability,
6 contributed to an overreliance on solitary confinement as a means of controlling
7 prisoners with serious mental illness.” *Id.* (citing *Coleman*, 2013 WL 6071977
8 (publication of the United States Department of Justice, Civil Rights Division)).

9 Defendant asserts that plaintiff’s complaint is “blatantly contradicted by the
10 record” so that “no reasonable jury could believe it,” because plaintiff was a legal adult
11 over the age of eighteen at all times throughout his arrest, booking, and pretrial
12 detention at King County Correctional Facility. Dkt. 20 at 6 (quoting *Scott v. Harris*, 550
13 U.S. 372, 380 (2007)).

14 Here plaintiff alleges that the two months he spent in maximum security housing
15 impacted his mental health and resulted in him being under suicide watch for a week.
16 Dkt. 5 at 5. He states that he was not supposed to be in special housing for over 48 to
17 72 hours “due to juvenile decline protocols and due to a lawsuit involving declines thru
18 Columbia legal services.” *Id.*

19 It does appear from the record that plaintiff was over 18 years of age at the time
20 that he was housed in maximum security housing. The “Prosecuting Attorney Case
21 Summary and Request for Bail and/or Conditions of Release” states that plaintiff was 18
22 years old at the time that he was charged with two counts of Murder in the Second
23 Degree and one count of Unlawful Possession of a Firearm in the Second Degree. Dkt.

21-1. However, even if plaintiff was not a juvenile throughout this period, he still may be able to allege a claim for violations of his Fourteenth Amendment rights due to his placement in maximum security housing. It is not clear from plaintiff's complaint whether the factual allegations concerning conditions of confinement would meet constitutional standards. Therefore, if plaintiff wishes to pursue this claim he must amend his complaint to allege facts to support a plausible claim that his Fourteenth Amendment rights were violated by his placement into maximum security housing. *See, Coleman v. Brown*, 938 F.Supp.2d 955, 979 (E.D. Cal. 2013).

D. Qualified Immunity

Defendants argue that, alternatively, they are entitled to dismissal of the claim based on qualified immunity. Unless plaintiff makes a two-part showing, qualified immunity shields government officials from liability. The plaintiff must show both: the official(s) violated a federal statutory or constitutional right, and – at the time of the alleged act or failure to act there was clearly established law that defined the contours of the federal right objectively putting the official(s) on notice – i.e., any reasonable official would understand that what they are doing is unlawful. *Escondido v. Emmons*, 586 U.S. 38, 42-43 (2019); *District of Columbia v. Wesby*, 583 U.S. 48, 62-63 (2018).

Under Fed. R. Civ. P. 12(b)(6), the Court must review the complaint and take all well-pleaded factual allegations as true; the Court must construe such allegations in the light that is most favorable to the non-movant; and the Court must evaluate whether those facts plausibly state a claim that the plaintiff is entitled to relief under applicable law. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1 On a motion to dismiss, the District Court reviews “whether the complaint alleges
2 sufficient facts, taken as true, to support the claim that the officials’ conduct violated
3 clearly established constitutional rights of which a reasonable officer would be aware ‘in
4 light of the specific context of the case.’” *Keates v. Koile*, 883 F.3d 1235, 1235 (9th Cir.
5 2018) (quoting, *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam)). Determining
6 whether qualified immunity applies to a defendant in the pre-trial motion stage under
7 Fed. R. Civ. P. 12(b)(6) can be problematic. *Keates v. Koile*, at 1234. “If the operative
8 complaint ‘contains even one allegation of a harmful act that would constitute a violation
9 of a clearly established constitutional right,’ then plaintiffs are ‘entitled to go forward’
10 with their claims. *Id.* at 1235 (quoting, *Pelletier v. Fed. Home Loan Bank of San*
11 *Francisco*, 968 F.2d 865, 872 (9th Cir. 1992)).

12 Here, as stated above, in the proposed Complaint, plaintiff has not shown that
13 any of the defendants have violated a clearly established law because he has not
14 alleged sufficient facts to allege participation by any of the defendants. Therefore if
15 plaintiff does not amend his complaint to allege sufficient facts regarding defendant’s
16 actions, and allege sufficient facts to support a plausible claim that the acts or omissions
17 of each of the defendant constituted a violation of his rights, the Court may submit a
18 report and recommendation to Judge Coughenour recommending dismissal. If the
19 defendants are, on the face the Amended Complaint, entitled to qualified immunity,
20 dismissal with prejudice may be appropriate.

21 CONCLUSION

22 For the foregoing reasons, the Court recommends that plaintiff’s claims against
23 defendants be dismissed without prejudice and with leave to amend.

1 Where a motion to dismiss is granted, a district court should provide leave to
2 amend unless it is clear that the complaint could not be saved by any
3 amendment. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.
4 2003). Even after a complaint has been amended or a responsive pleading has been
5 served, the Federal Rules of Civil Procedure provide that “[t]he court should freely give
6 leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit
7 requires that this policy favoring amendment be applied with “extreme
8 liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.
9 1990). “In determining whether leave to amend is appropriate, the district court
10 considers ‘the presence of any of four factors: bad faith, undue delay, prejudice to the
11 opposing party, and/or futility.’” *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d
12 708, 712 (9th Cir. 2001) (quoting *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880
13 (9th Cir. 1999)).

14 The Court reminds plaintiff that if he files an amended complaint, it must be
15 legibly written or retyped in its entirety and contain the same case number. All claims
16 that he wishes to bring against each defendant must be raised in the Amended
17 Complaint, and the Court will not consider claims raised by a separate memorandum or
18 other filing. Any cause of action alleged in the original complaint that is not alleged in
19 the amended complaint is waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th
20 Cir. 1997), *overruled in part on other grounds, Lacey v. Maricopa Cnty.*, 693 F.3d 896
21 (9th Cir. 2012).

22 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall
23 have fourteen (14) days from service of this report to file written objections. *See also*
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1 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for
2 purposes of *de novo* review by the district judge, see 28 U.S.C. § 636(b)(1)(C), and can
3 result in a waiver of those objections for purposes of appeal. See *Thomas v. Arn*, 474
4 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations
5 omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is
6 directed to set the matter for consideration on **October 23, 2024** as noted in the
7 caption.

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9 Dated this 8th day of October, 2024.

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Theresa L. Fricke
13 United States Magistrate Judge
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